

TITLE 27. ENVIRONMENTAL PROTECTION

DIVISION 2. SOLID WASTE

**SUBDIVISION 1. CONSOLIDATED REGULATIONS FOR TREATMENT,
STORAGE, PROCESSING OR DISPOSAL OF SOLID WASTE**

**CHAPTER 6. FINANCIAL ASSURANCES AT SOLID WASTE FACILITIES AND
AT WASTE MANAGEMENT UNITS FOR SOLID WASTE**

SUBCHAPTER 4. FINANCIAL ASSURANCES ENFORCEMENT PROCEDURES

ARTICLE 1. SOLID WASTE FACILITIES

Section 22270. Scope and Applicability.

All operators of disposal facilities shall be subject to the requirements of this article, except state and federal operators.

NOTE: Authority cited: Sections 40502, 43040 and 43601.5, Public Resources Code. References: Sections 43040, 43500 through 43610.1, Public Resources Code, and Title 40 Code of Federal Regulations, Section 258.70.

Section 22271. Definitions.

a) "Degree of non-compliance" means the status of compliance of a an operator with the financial assurance requirements. An operator is either: 1) partially out of compliance with the requirements ("Minor"); or 2) completely out of compliance with the requirements ("Major").

b) "Potential for harm" means the degree to which operator's actions adversely affect the public health, safety and the environment. This potential is based on the anticipated closure date for a facility. If the anticipated closure date is:

- 1) 2 years or less the potential for harm is "Major."
- 2) more than 2 years and up to 10 years, the potential for harm is "Moderate."
- 3) over 10 years the potential for harm is "Minor."

NOTE: Authority cited: Sections 40502, 43040 and 43601.5, Public Resources Code. References: Sections 43040, 43500 through 43610.1, Public Resources Code.

Section 22272. Notice of Violation.

- (a) The CIWMB shall send a written Notice of Violation to ~~a facility when~~ an operator violates^{ing} the requirements of Articles 1, 2 and 3 of Subchapter 2 of this Chapter (commencing with section 22205).
- (b) The CIWMB shall send a copy of the Notice of Violation to the respective enforcement agency.
- (c) The Notice of Violation shall:
 - 1) describe the violation which CIWMB staff believe is occurring; and
 - 2) describe the consequences of continued failure to comply or respond.
- (d) An operator shall submit a response to a Notice of Violation within 10 working days from receipt of the Notice of Violation.
- (e) The CIWMB may consider all contacts with an operator as "good faith" efforts to comply with the regulations, and the CIWMB may extend the timeframe for an operator to respond and/or comply, as the CIWMB deems necessary.

NOTE: Authority cited: Sections 40502, 43040 and 43601.5, Public Resources Code. References: Sections 43040, 43500 through 43610.1, Public Resources Code.

Section 22273. Issuance of Notice and Order and Stipulated Notice and Order.

- (a) If an operator fails to respond to the Notice of Violation within the specified timeframe, the CIWMB shall draft and send a Notice and Order, as defined in Title 14, California Code of Regulations section 18304, to the operator, and notify the local enforcement agency of the enforcement action.
- (b) An operator shall respond to the CIWMB with evidence of compliance, or request an alternate schedule for compliance, within 10 working days from receipt of the Notice and Order.
- (c) If an operator responds to the Notice and Order by offering partial compliance immediately, and full compliance over a period of time, which is acceptable to the CIWMB, the CIWMB may enter into a Stipulated Notice and Order with the operator.
- (d) If an operator fails to conform with the compliance schedule within the specified timeframe as provided in the Notice and Order or Stipulated Notice and Order, further enforcement action may be taken by the CIWMB, as specified in the Notice and Order or Stipulated Notice and Order.

NOTE: Authority cited: Sections 40502, 43040 and 43601.5, Public Resources Code. References: Sections 43040, 43500 through 43610.1, Public Resources Code.

Section 22274. Compliance Options.

(a) The CIWMB may consider compliance options other than imposing penalties. The CIWMB may consider options that include, but not limited to:

- 1) Placing restrictions on current financial assurance mechanism(s) being used by the operator such as, requiring more frequent reporting requirements.
- 2) Prohibiting use of current financial assurance mechanism(s) being used by the operator, and requiring the operator to establish an alternate mechanism as prescribed in section 22228 of this Title.

NOTE: Authority cited: Section 40502, 43040 and 43601.5, Public Resources Code. References: Sections 43040, 43500 through 43610.1, Public Resources Code.

Section 22275. Penalty Calculations.

(a) If the CIWMB chooses to impose a penalty, the daily penalty shall equal an amount determined by the gravity-based matrix, in Table 1., using the degree of non-compliance and the potential for harm as the deciding factors, added to the economic benefit an operator receives from noncompliance with the regulations.

DEGREE OF NON-COMPLIANCE		
	MAJOR	MINOR
	\$10,000	\$7,999
MAJOR	TO	TO
	\$8,000	\$5,000
	\$4,999	\$1,999
MODERATE	TO	TO
	\$2,000	\$800
	\$799	\$499
MINOR	TO	TO
	\$500	\$0

Table 1.

- 1) The economic benefit portion of a penalty, for lack of liability coverage, shall be based on a minimum annual premium for liability insurance, as identified by a CIWMB survey of the insurance industry. The premium is multiplied by the number of years an operator is out of compliance (~~whole number rounded up to the next whole year if a partial year of noncompliance exists~~).
 - 2) The economic benefit portion of a penalty, for lack of coverage for closure and/or postclosure maintenance costs shall be based on the current cost of a letter of credit or bond, as identified by a CIWMB survey of the banking industry or insurance industry, respectively. The cost for a letter of credit or bond is multiplied by a pro-rata factor for the length of time of non-compliance.
- (b) Determinations of penalty amounts may be modified by the CIWMB for one or more of the following reasons:
- 1) Evidence that adequate coverage has been subsequently provided, such as bank statements, letter from county treasurer verifying balance of fund, certificate demonstrating adequate coverage, etc.
 - ~~2) Verifiable documentation of inability to pay the penalty has been subsequently provided, such as financial statements, current budget reports, etc.~~
 - 32) Evidence of a payment schedule, if applicable, detailing the operator's good faith efforts has been subsequently provided, such as past deposits to the financial assurance mechanism, etc.
 - 43) An operator's good faith efforts to comply or lack of good faith.
 - 54) An operator's degree of willingness to comply.
 - 65) An operator's history of compliance.
 - 76) Other unique factors such as size of operation, threat to public health and safety and the environment.
- (c) Penalties ~~shall~~ may be pursued by the CIWMB administratively or through superior court based on the following criteria:
- 1) If the total initial civil penalty assessment is \$15,000 or less, the CIWMB may pursue penalties administratively pursuant to Public Resources Code, section 45011.
 - 2) If the total initial civil penalty assessment exceeds \$15,000, the CIWMB may pursue penalties through superior court, pursuant to Public Resources Code, section 45023.

NOTE: Authority cited: Sections 40502, 43040 and 43601.5, Public Resources Code. References: Sections 43040, 43500 through 43610.1, Public Resources Code.

Section 22276. Processing and Collection of Civil Penalty.

Processing and collection of civil penalties shall be made ~~to~~ by the CIWMB as provided in Public Resources Code, Division 30, Part 5, Article 3.(commencing with section 45010).

NOTE: Authority cited: Sections 40502, 43040 and 43601.5, Public Resources Code. References: Sections 43040, 43500 through 43610.1, Public Resources Code.

Section 22277. Appeals Process.

Any aggrieved person may appeal a Notice and Order by the CIWMB, according to Public Resources Code, sections 45017 and 45030.

NOTE: Authority cited: Sections 40502, 43040 and 43601.5, Public Resources Code. References: Sections 43040, 43500 through 43610.1, Public Resources Code.

Section 22278. Continued or Recurring Violations.

(a) If an operator pays an initial penalty but fails to correct the violation pursuant to Notice and Order, or has recurring violations within a three year period from the date of the preceding Notice of Violation:

- 1) the CIWMB may re-initiate the enforcement process;
- 2) the CIWMB may pursue action to revoke a permit, according to Public Resources Code section ~~44306~~ 43300, and/or pursue closure of the facility;
- 3) the CIWMB may pursue both 1 and 2 above.

NOTE: Authority cited: Section 40502, 43040 and 43601.5 Public Resources Code. References: Sections 43040, 43500 through 43610.1, Public Resources Code.